PBGC

Protecting America's Pensions

Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

September 22, 2008

Re: and Appeal 2007-1082, Case 198370,
National Steel Corp. Hourly Pen. Plan (the "Plan")

Dear

We are responding to your jointly-filed appeals of PBGC's
December 14, 2006 determination of   benefit and PBGC's
August 29, 2005 determination of   benefit.[1] For the
reasons stated below, we decided that the monthly benefit amounts
_____ currently are receiving from PBGC ($1,263.33
and $706.89, respectively) will not be reduced.

Determination and Appeal

PBGC's December 14, 2006 determination stated that
_____ as the alternate payee of   under a Qualified
Domestic Relations Order (QDRO), is entitled to a monthly benefit
of $585.64 in the form of a Straight Life Annuity (SLA). The
Benefit Statement PBGC enclosed with her determination shows that:
(1) PBGC accepted the $706.89 monthly amount the former Plan
Administrator ("National Steel") had calculated for her; and (2)
PBGC determined that it should reduce the $706.89 amount to $585.64
based on PBGC's Maximum Guaranteed Benefit ("MGB") limit (see
further discussion below).

PBGC's August 29, 2005 determination stated that
is entitled to a $1,262.33 monthly benefit in the form of a SLA.
The monthly amount of $1,262.33 equals the Plan benefit amount
National Steel had calculated for him after the QDRO reduction.
Thus, PBGC did not reduce   benefits based on the MGB.

In your jointly-filed letter dated March 2, 2007, you state:

_____

[1] The Appeals Board exercised its discretion under PBGC's regulations and
decided that   jointly-filed appeals of their benefit
determinations should be consolidated. See 29 Code of Federal Regulations
section 4003.56 (consolidation of appeals).

> When PBGC pays benefits [under a QDRO] and the
> amount of total benefit . . . to both the participant and
> Alternate Payee is ·reduced, then the Participant and
> Alternate Payee should be reduced by the same percentage.

> I   participant was not reduced.
>   Alternate Payee is being reduced.   I
> think if we were both reduced equally percentage wise,
>   would still be over her MGB.

The appeal requests that   benefit be increased by the
$121.25 amount that   _   benefit is decreased. The appeal
requests this result so that   _   combined
benefits would not be limited by the MGB.

Background

When the Plan terminated on December 6, 2002, it did not have
sufficient assets to provide all benefits PBGC guarantees under
Title IV of the Employee Retirement Income Security Act ("ERISA"),
and PBGC became the Plan's trustee. Because of legal limits under
ERISA and PBGC's regulations, the benefits that PBGC guarantees may
be less than the benefits a pension plan would otherwise pay.

The QDRO's Provisions

National Steel calculated your monthly Plan benefits based on
your Qualified Domestic Relations Order ("QDRO") dated September 2,
1997. Your QDRO is a "separate interest" type of QDRO. This means
that the alternate payee may elect a date of retirement and form of
annuity without regard to when the participant starts payments and
without regard to the form of the participant's payments. Under a
separate interest QDRO, the participant's benefit thus is divided
into two parts — one for the participant and one for the alternate
payee.

Your QDRO provided that   "is awarded 50% of the
participant's benefit as determined as of November   1995 (date
of divorce."   It also stated that she may elect to receive her
benefits "in a form which provides her a life annuity based on her
life." We note that, although the QDRO provided   with
the option of starting her benefits on a different date than
Hornyak, both decided to start benefits on the same date (October
1, 1997).

The QDRO also addressed how benefit payments would be
allocated if the Plan should terminate with an unfunded liability.

For this situation (under which PBGC would be making payments), the QDRO provides: "[I]f the amount of the total benefit payment to be paid to both the participant and the alternate payee is thus reduced, then the participant's benefit payments, and the alternate payee's benefit payments shall each be reduced by the same percentage."

Plan Benefits

When _____ retired in 1997, National Steel determined that his monthly accrued benefit is $2,078.33.[2] For purposes of the QDRO, National Steel also determined that his accrued benefit as of his November ___ 1995 divorce date is $1,632.00. Your appeal does not challenge either of those amounts.

Thus, _____ benefit under the QDRO, prior to the actuarial adjustment for her age, is $816.00.[3]   Plan benefits under the QDRO accordingly is the remainder of his $2,078.33 accrued benefit, which is $1,262.33.[4]

National Steel also actuarially reduced _____ $816.00 monthly benefit amount to reflect that, because she was younger than _____ she likely would be receiving benefit payments over a longer time period. Thus, National Steel multiplied the $816.00 amount by an age adjustment factor of 0.866287, which resulted in a monthly benefit of $706.89. That amount is payable to Ms. Hornyak for her lifetime.

Impact of Maximum Guaranteed Benefit Limit

PBGC determined that it was required to reduce _____ PBGC benefit because of the MGB, which establishes the maximum monthly amount that PBGC may guarantee for a participant under a terminated pension plan. Specifically, section 4022(b) of ERISA provides that PBGC's guarantee of a participant's plan benefit cannot exceed a specified dollar amount payable in the form of a Straight Life Annuity at age 65. For plans like yours with

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[2] We note that _____ Plan benefit _____ benefits under the QDRO) initially included 5-year certain benefits. The 5-year certain period benefits, however, had ended before the Plan's termination date. Therefore, under PBGC regulations, there is no adjustment to MGB for the 5-year certain period benefit.

[3] 50% x $1,632.00 (accrued benefit at date of divorce) = $816.00.

[4] 2,078.33 (accrued benefit at retirement) less $816.00 benefit under QDRO) = $1,262.33.

termination dates in 2002, the MGB is $3,579.55 per month in the form of a SLA for a participant who is age 65 on the Plan termination date. In both of your cases, PBGC must reduce the $3,579.55 MGB amount because, when PBGC started paying your guaranteed benefits following the Plan's termination date (December 6, 2002), you were both younger than age 65.

A PBGC technical procedure (Actuarial Technical Manual-Interim § 03-1, which we will refer to as "Procedure 03-1") addresses how the MGB should be applied when a separate-interest QDRO assigns a percentage (i.e., not a fixed dollar amount) of the participant's benefit to the alternate payee. Under Procedure 03-1, the participant and alternate payee each are assigned a percentage of the MGB based on their respective shares of the participant's benefit. In determining the respective shares for purposes of the MGB, PBGC follows the terms of the QDRO (i.e., if the alternate payee is assigned 40% of the benefit under the QDRO, she will receive 40% of the MGB). Also, after the MGB is split, PBGC calculates the MGB separately for each party based upon his and her "age, form of benefit, age of current spouse, etc."

The above-discussed PBGC procedure is illustrated by PBGC's MGB calculations for   PBGC determined that
_   : (1) is entitled to 39.2623% of the MGB because the benefit assigned to her under the QDRO is 39.2326% of _   accrued benefit;[5] and (2) her MGB age adjustment factor, which is based on the date of Plan termination and her August 10, 1949 birth date, is 0.4167. Thus, PBGC determined that the MGB for her benefits is $585.64. The $585.64 amount equals $3,579.55 (age 65 MGB for a SLA) multiplied by 0.4167 (MGB age adjustment factor) and by 0.392623 (her % of the MGB based on the QDRO) [$3,579.55 x 0.4167 x 0.392623 = $585.64]. Although   Plan benefit amount is $706.89, PBGC concluded that it cannot pay her any more than $585.64 (the lesser of her MGB and her Plan benefit).

PBGC concluded that   _   share of the MGB is 60.7377% of the MGB [100% - 39.2623% (percentage assigned to _   = 60.7377%].   age adjustment factor, which is based on the date of Plan termination and his March 4, 1942 birth date, is 0.7083. Thus,   MGB is computed as $1,539.94 ($3,579.55 x 0.7083 x 0.607377). Since his Plan benefit of $1,262.33 is less than his MGB, PBGC determined that it will pay him his full Plan benefit.

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[5] The 39.2326% PBGC computed equals the $816.00 payable to under the QDRO (before the reduction the former Plan Administrator made for her age at benefit commencement) divided by   accrued benefit of $2,078.33 (which is the amount of his Plan benefit before the QDRO reduction).

Discussion

PBGC's MGB benefit calculations for
conformed with the method in PBGC Procedure 03-1 for separate-
interest QDROs. Under the unique circumstances of your cases,
however, we decided to change PBGC's determination so that the MGB
causes no reduction to either of your Plan benefit amounts.

In reaching this conclusion, we first took into account the
specific terms of the QDRO. We note that, in the usual case, the
QDRO is either: (1) silent concerning how to allocate PBGC benefit
reductions between the participant and the alternate payee; or (2)
provides that the reduction should be "pro rata" based the value of
the participant's and alternate payee's benefits. See model
Separate Interest QDRO in *Qualified Domestic Relations Orders &
PBGC* (available on PBGC's website), which suggests language for a
"pro rata" reduction. In your case, however, the QDRO uses
language that differs somewhat from PBGC's model. Your QDRO states
that, if benefits are reduced by PBGC, "then the participant's
benefit payments, and the alternate payee's benefit payments shall
each be reduced by the same percentage."

Thus, your QDRO focuses upon the percentage reductions to
benefit "payments," rather than to reductions based on the "value"
of the benefits. Moreover, as a result of the QDRO's specific
language, an apparent inconsistency arises between PBGC's benefit
calculations (which are based on Procedure 03-1) and what the QDRO
provides. Under the QDRO's terms, benefit payments for
are "reduced by the same percentage," but, under Procedure
03-1, her benefits are reduced by $121.25 and his benefits are not
reduced at all.

The second unique circumstance is that, when the method in
Procedure 03-1 is applied to your cases, the MGB reduces the Plan
benefits for only one of the two parties to the QDRO. As discussed
above, PBGC's determination proposed a $121.25 per month MGB
reduction to   benefits, while   Plan
benefit amount (after the reduction under the QDRO) is $271.61 less
than his share of the MGB. We further note that, since
are different ages, the actuarial values at DOPT of their
monthly benefit payments are different. But even if their monthly
benefits are adjusted to equivalent age-65 amounts based on the
actuarial assumptions for the MGB (which are established in PBGC's
regulations), their combined benefits are less than the MGB.[6]

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[6] This is illustrated by converting the $706.89 benefit   was
receiving at DOPT (when she was age 53 and 4 months, rounded up to the next
higher month) to a benefit of equivalent value starting at age 65 in the SLA
form. Using the MGB actuarial assumptions, her age-65 equivalent benefit is
$1,696.40 per month. Similarly, the $1,262.33 benefit that   was

Finally (and most significantly), in this case it is possible to reallocate   shares of the MGB in a way that is both: (1) consistent with terms of your QDRO, and (2) results in no benefit reductions based on the MGB. This would occur, for example, if 48% of the MGB is assigned to   _   (as Alternate Payee) and the remaining 52% to   Using a 48% allocation, the MGB for   _   is $727.40 [$3,579.55 x 0.4167 (age adjustment) x 0.48 (her MGB %) = $715.97]. Since her $715.97 MGB is greater than her $706.89 Plan benefit amount, her Plan benefit amount is not reduced by the MGB.

For   _   his MGB using a 52% allocation is $1,318.41 [$3,579.55 x 0.7083 (age adjustment) x 0.52 (his MGB %) = $1,318.41]. Since his $1,318.41 MGB is greater than his $1,262.33 Plan benefit amount, his PBGC benefit also is not reduced by the MGB.

As indicated above, this decision is limited to the unique circumstances of your cases. Therefore, this decision does not apply to other participants in PBGC-trusteed pension plans who have different factual circumstances.

<div align="center">Decision</div>

For the reasons stated below, we decided that the monthly benefit amounts   currently are receiving from PBGC should not be reduced based on the Maximum Guaranteed Benefit limit. Accordingly, the $1,263.33 monthly PBGC benefit that   currently is receiving and the $706.89 monthly PBGC benefit that   _   currently is receiving will not be changed.

This decision is the agency's final action regarding the issues raised in your appeals. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles W. Vernon
Chair, Appeals Board

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receiving at DOPT is equivalent to a benefit of $1,782.20 starting at age 65 in the SLA form. Accordingly, the $1,696.40 age-65 amount for   _   plus the $1,782.20 age-65 amount for   totals $3,478.60, which is less than the age-65 MGB amount of $3,579.55 for pension plans terminating in 2002.